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Subject: Follow up to question

Here is the additional analysis to address your question about RR 90-72.

Rev Rul 90-72 does not replace Rev. Rul. 56-249. Rather, it builds on it, emphasizing 3 points:

1. **IRC 3402(o).** The definition in IRC 3402(o) does not apply for FICA and FUTA purposes; the definition is contained in a series of administrative pronouncements published by the Service. Rev. Rul. 90-72 walks through the relevant revenue rulings. In particular, Rev. Rul. 90-72 summarizes Rev. Rul. 56-249, listing the 8 features of the plan at issue in that ruling. Rev. Rul. 90-72 also mentions the 2 revenue rulings that broaden Rev. Rul. 56-249 by stating that payment of benefits under a plan unilaterally instituted by the employer or other than from a trust do not alter the conclusion of Rev. Rul. 56-249. Rev. Rul. 90-72 mentions 2 additional revenue rulings that hold that termination and severance payments and lump-sum payments are wages. Thus, in determining whether benefits paid under a SUB plan are wages for purposes of FICA, FUTA or federal income tax withholding, it may not be necessary to look beyond Rev. Rul. 90-72; however, for a fuller explanation of the features of the plan at issue in the 1956 ruling, it may be useful to refer to that ruling.

2. **Link to state unemployment compensation.** *Rev. Rul. 56-249* provides a limited exception from the definition of wages for FICA, FUTA, and federal income tax withholding purposes for certain payments made upon the involuntary separation of an employee from the service of the employer, but only if the payments are designed to supplement the receipt of state unemployment compensation. The portion of *Rev. Rul. 77-347* concluding that benefits do not have to be linked to state unemployment compensation in order to be excluded from the definition of wages for FICA and FUTA tax purposes is inconsistent with the underlying premises for the exclusion and is therefore revoked. This restores the distinction between SUB pay and dismissal pay by re-establishing the link between SUB pay and state unemployment compensation set forth in *Rev. Rul. 56-249*.

3. **Lump sum not SUB pay.** Since the receipt of supplemental unemployment benefits in the form of a lump sum rather than periodic payments allows the same amount of benefits to be received regardless of how long an individual remains unemployed, benefits provided in the form of a lump sum are not considered linked to state unemployment compensation, and are therefore not excludable from wages as SUB pay.

Let me know if you have any questions.